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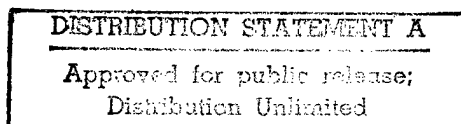
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CBO PAPER

THE EXPERIENCE
OF THE
CONGRESSIONAL BUDGET OFFICE
DURING THE FIRST YEAR
OF THE
UNFUNDED MANDATES REFORM ACT

January 1997

**CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515**



PREFACE

This paper reviews how the Congressional Budget Office (CBO) has responded to the requirements of the Unfunded Mandates Reform Act of 1995 during its first year of operation. The paper also provides some observations and analysis of how the act has worked based on CBO's experience.

The paper was prepared by Theresa Gullo, Chief of CBO's State and Local Government Cost Estimates Unit, under the supervision of Paul N. Van de Water and Robert Sunshine, and Elliot Schwartz, Chief of CBO's Commerce Unit, under the supervision of Jan Paul Acton. Gail Del Balzo, Matt Eyles, and Bruce Vavrichek made substantial contributions to this effort.

The paper was edited by Sherry Snyder. Rae Wiseman prepared the final version, and Brenda Trezvant typed many of the early drafts.

June E. O'Neill
Director

January 1997

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SUMMARY

The Unfunded Mandates Reform Act of 1995 (UMRA) established new procedures designed to ensure that the Congress fully considers the potential effects of unfunded federal mandates before imposing them on state, local, and tribal governments or the private sector. Among other reforms, those procedures call for the Congressional Budget Office (CBO) to provide statements to authorizing committees about whether reported bills contain mandates, and, if so, what their costs would be.

After operating under those procedures for one year, CBO concludes that title I of the act has made available more information about mandates and their costs. CBO has reviewed and provided analyses of mandates for more than 700 bills and legislative proposals (see Summary Table). Moreover, in at least some cases, that information was used to reduce the costs of proposed intergovernmental mandates. A preliminary review of laws enacted shows that in 1996, the Congress enacted few mandates with costs that exceeded the thresholds established in UMRA. Whether UMRA can be credited with that outcome is an open question.

SUMMARY TABLE. MANDATE STATEMENTS TRANSMITTED TO THE CONGRESS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS, 1996

	Intergovernmental	Private Sector
Total Statements Transmitted	718	673
Number of Statements That Identified Mandates	69	91
Number of Mandates with Costs Exceeding Threshold	11	38
Number of Mandates with Costs That Could Not Be Estimated	6	2

SOURCE: Congressional Budget Office.

NOTE: The numbers included in this table represent official statements transmitted to the Congress by the Director of CBO. CBO prepared more intergovernmental statements than private-sector statements because in some cases CBO was asked to review a specific bill, amendment, or conference report solely for intergovernmental mandates. In those cases, no private-sector analysis was transmitted to the requesting Member or committee. CBO also completed a number of preliminary reviews and informal estimates for other legislative proposals that are not included in this table.

How CBO Has Responded to UMRA

To carry out its new responsibilities under UMRA, CBO has enhanced its existing state and local government cost-estimating efforts and has begun estimating private-sector costs of mandates. Most significantly, CBO established a new unit—the State and Local Government Cost Estimates Unit—to provide cost estimates for intergovernmental mandates, and reallocated staff throughout the agency to provide estimates for private-sector mandates.

General Observations About Mandates and Their Costs

CBO has developed a number of general observations about mandates and their costs based on the work accomplished over the past year:

- o *Most mandates did not impose significant costs.* In fact, in a number of cases the imposition of a mandate might have led to savings for the mandated parties.
- o *Sometimes there were costs, but not direct costs as defined by UMRA.* UMRA makes it clear that direct costs are the additional direct costs that would be incurred by the mandated party, without reference to whether other nonmandated parties might also face costs.
- o *Not all costs resulted from mandates.* Many of the costs imposed on state, local, and tribal governments resulted from conditions of federal aid that are not mandates under UMRA.
- o *Most significant intergovernmental mandates would have imposed costs on state and local governments as employers, not as governing bodies.* The most costly mandates considered during 1996 were related to health insurance reform, an increase in the minimum wage, and occupational safety requirements. Those mandates affect state and local governments as employers, not as governing bodies.

Problems in Interpreting Definitions

The definitions of mandates and their costs contained in UMRA are sometimes difficult to interpret and apply. A mandate is defined as any provision in legislation, statute, or regulation that would impose an "enforceable duty" on state, local, or tribal governments or the private sector, or that would reduce or eliminate the amount of federal funding authorized to be appropriated to cover the costs of existing mandates.

Other provisions of UMRA narrow the scope of the law through exclusions and exceptions. UMRA defines the direct costs of a mandate as the incremental amounts that the mandated party is "required to spend" to comply with the enforceable duty. Also included are amounts that states, localities, and tribes "would be prohibited from raising in revenue." Excluded are amounts already spent on the relevant activity. CBO remains uncertain how to resolve several ambiguities with respect to definitions in UMRA, specifically:

- o *Do indirect effects on existing mandates count under UMRA?* That is, how should CBO view a bill that does not by itself contain a mandate but would increase the cost of an existing mandate?
- o *What is the cost of extending an existing mandate?* That is, if an existing mandate would expire but is extended by new legislation (such as a reauthorization bill), what is the base case against which incremental costs should be measured?
- o *How should costs and savings in the same bill be aggregated?* Under UMRA, threshold levels of costs—specifically, \$50 million for intergovernmental mandates—can trigger a point of order against a bill. Costs of various provisions within a bill are supposed to be aggregated and then offset by direct savings to the mandated parties. In some cases, CBO has been unable to determine whether unrelated savings provided to some parties should be offset against mandated costs imposed on other parties by the same bill.

INTRODUCTION

One of the earliest acts of the 104th Congress was to pass the Unfunded Mandates Reform Act of 1995 (UMRA). The act amends the Congressional Budget and Impoundment Control Act of 1974 to establish new procedures that the Congress must follow when it considers legislation. Those procedures are designed to increase the amount of information the Congress has before it votes on legislation that may contain federal mandates—enforceable duties on state, local, and tribal governments or the private sector—and in general, to make it more difficult to enact legislation containing unfunded mandates. The new legislative procedures established by UMRA became effective on January 1, 1996.

This paper summarizes the experience of the Congressional Budget Office (CBO) over the first year in carrying out new responsibilities under title I of UMRA. In 1996, CBO reviewed more than 700 bills and legislative proposals to determine whether they contained federal mandates. Those reviews yielded a great deal of information about possible federal mandates and their potential costs.

THE UNFUNDED MANDATES REFORM ACT OF 1995

Through legislation and subsequent regulation, the federal government often requires state, local, and tribal governments and private parties to expend resources to meet certain goals. Those resources are not counted in, nor are they constrained by, the federal budget. UMRA is an attempt by the Congress to obtain information on the potential costs of federal mandates before enacting legislation. The stated purposes of the act point clearly to the role that enhanced information is expected to play in curbing the imposition of unfunded mandates and strengthening the partnership between the federal government and state, local, and tribal governments.

Title I of UMRA requires CBO to provide information about the cost of mandates in proposed legislation and establishes new procedures designed to make it more difficult for the Congress to enact legislation containing unfunded intergovernmental mandates. Title II requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Title III requires the Advisory Commission on Intergovernmental Relations to submit reports on existing mandates and ways of measuring their costs. This paper focuses on CBO's experience under title I.

Mandate Cost Statements: CBO's New Role Under the Act

The act requires CBO to provide a statement to Congressional authorizing committees about whether reported bills contain federal mandates. If the total direct costs of all mandates in a bill are above a specified threshold in the fiscal year in which

the mandate is first effective, or in any of the four following years, CBO must provide an estimate of those costs, if feasible, and the basis of the estimate. The threshold is \$50 million for intergovernmental mandates—those affecting state, local, or tribal governments—and \$100 million for private-sector mandates. The committees must publish CBO's mandate statements in their reports or in the *Congressional Record* in advance of floor consideration. (Other requirements that UMRA imposes on committees are discussed in Box 1.)

The CBO statement must also include an assessment of whether the bill authorizes or otherwise provides funding to cover the costs of new federal mandates. For intergovernmental mandates, the cost statement must estimate the appropriations needed to fund such authorizations for up to 10 years after the mandate is effective.

Conference committees must, "to the greatest extent practicable," ensure that CBO prepares statements for conference agreements or amended bills if they contain mandates not previously considered by either House, or if they impose greater direct costs than the previously considered versions of the bill. At the request of a Senator, CBO must prepare estimates of the costs of intergovernmental mandates contained in an amendment the Senator may wish to offer.

The Congress may also call on CBO to do analyses at other stages of the legislative process. If asked by the Chairman or Ranking Minority Member of a committee, CBO will assist committees in analyzing the impact of proposed legislation, conduct special studies of legislative proposals, and compare an agency's estimate of the costs of proposed regulations implementing a federal mandate with CBO's estimate prepared when the law was enacted.

Enforcement Mechanisms

Section 425 of UMRA sets forth rules in both Houses that prohibit the consideration of legislation containing mandates unless certain conditions are met. Consideration of a reported bill is not in order unless the committee has published a CBO statement about the costs of mandates. It is also not in order to consider any bill, amendment, motion, or conference report that would create an intergovernmental mandate or would increase the direct costs of an existing intergovernmental mandate by more than \$50 million, unless the legislation provides direct spending authority or authorizes appropriations sufficient to cover the costs. Such authorizations would

have to be specified for each year up to 10 years after the effective date and, in the Senate, would have to be consistent with the estimated costs of the mandate in the legislation as determined by the Budget Committee. In addition, any bill, amendment, motion, or conference report that authorizes the appropriation of funds to pay for an intergovernmental mandate with costs above the threshold is not in order unless it provides a procedure for terminating or scaling back mandates if agencies determine that funds are not sufficient to cover those costs.

Finally, although the act does not specifically require CBO to analyze the cost of mandates in appropriation bills, consideration of legislative provisions in such bills—or amendments to them—that increase the direct costs of intergovernmental mandates is not in order unless an appropriate CBO statement is available.

BOX 1.

NEW RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

The Unfunded Mandates Reform Act also contains a number of new requirements for committees. In general, when an authorizing committee reports a bill or joint resolution that includes a federal mandate, the report must identify and describe those mandates and include a statement from the Director of the Congressional Budget Office (CBO) on their estimated costs. If that statement cannot be published with the report, the committee is responsible for ensuring that it is published in the *Congressional Record* in advance of floor consideration. The committee is responsible for promptly providing CBO with a copy of the bill and for identifying mandates contained in the bill.

In addition, the report must contain a qualitative and, if practical, a quantitative assessment of costs and benefits anticipated from the mandates (including the effects on health and safety and the protection of the natural environment). Finally, the committee must state the degree to which a federal mandate affects both the public and private sectors, and the effect on the competitive balance between those sectors if federal payments are made to compensate for costs imposed on the public sector.

If the bill imposes intergovernmental mandates, the committee report must contain a statement of how those mandates are to be funded by the federal government; whether the committee intends for the mandate to be partially or fully funded; how the funding mechanism relates to the expected direct costs to the respective levels of state, local, and tribal governments; and any existing source of funds in addition to those already identified that would assist governments in meeting the direct costs of the mandate.

For amended bills, joint resolutions, and conference reports, the committee of conference must ensure, to the greatest extent possible, that the Director of CBO prepares a statement if the amended form contains a federal mandate not previously considered by either House or contains an increase in the direct costs of a previously considered mandate.

Finally, the committees are required, in their annual views and estimates reports to the budget committees, to identify issues they will consider that will have costs for state, local, or tribal governments or for the private sector.

None of these rules, however, are self-enforcing; a Member must raise a point of order to enforce them. In the House, if a Member raises a point of order, the full House votes on whether to consider the bill regardless of the violation. In the Senate, if a point of order is raised and sustained by the Chair, the bill is, essentially, defeated.

HOW CBO HAS RESPONDED TO UMRA

Although CBO has been providing estimates of the impact of federal legislation on state and local governments since 1982, the passage of the Unfunded Mandates Reform Act signaled Congressional interest in having better information on the costs of mandates. This heightened interest on the part of the Congress made it clear that CBO must devote more time and resources to providing the Congress with in-depth and timely estimates of legislative mandates.

New Cost-Estimating Staff

CBO has taken several steps to enhance its ability to prepare cost estimates of the effects of federal legislation on state and local governments. Most important, CBO established a new unit in the Budget Analysis Division—the State and Local Government Cost Estimates Unit. In addition to preparing cost estimates, the unit also conducts special studies related to mandates and their budgetary impact and provides ongoing support to Congressional committees as they address the issues of intergovernmental mandates. The new unit is currently staffed with a unit chief and six analysts.

For private-sector analyses, CBO has hired additional staff and has reallocated existing staff to prepare cost estimates and to conduct special studies when requested. Those staff also provide ongoing support to Congressional committees as they address the issues of private-sector mandates.

In total, CBO devoted about 24 staff-years to reviewing legislation and other proposals and to preparing mandate statements in 1996. CBO's appropriation for fiscal year 1996 provided 13 additional positions to carry out those new duties. An additional 11 staff-years were allocated from other analytical activities. (See Appendix A for a list of CBO staff members who have contributed to analyses of mandates.)

TABLE 1. MANDATE STATEMENTS TRANSMITTED TO THE CONGRESS FOR BILLS, PROPOSED AMENDMENTS, AND CONFERENCE REPORTS, 1996

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Bills and Legislative Proposals Reviewed

As shown in Table 1, CBO analyzed more than 700 bills and other legislative proposals to determine whether they contained federal mandates.¹ Ninety-one of the bills and proposals reviewed (about 14 percent) contained private-sector mandates, and 38 of those (6 percent of the total) had mandates above the \$100 million threshold. Of the bills that had mandates above the threshold, roughly two-thirds dealt with health insurance, immigration, welfare, and proposals for increasing the minimum wage.

Sixty-nine of the bills and proposals reviewed (about 10 percent) contained intergovernmental mandates; of those, 11 (2 percent of the total) contained mandates with costs above the \$50 million threshold. Those 11 bills dealt with five intergovernmental mandates: an increase in the minimum wage, a requirement to provide mental health parity in insurance plans, a preemption of state securities fees, a requirement for state and local workplaces to comply with certain occupational health and safety rules, and a requirement that states include Social Security numbers

1. The majority of these analyses are for bills and joint resolutions reported to the House or Senate. Also included are analyses of amendments and conference reports that were considered by the Congress as well as draft proposals. Other bills or reports may have been considered by the Congress without a CBO mandate statement for several reasons: they may not have been reported by a committee; they may have been considered under suspension of the rules or by unanimous consent; or, especially for conference reports, CBO may not have been asked with sufficient lead time to review the report.

on all driver's licenses and identification cards. (Appendix B lists the bills and proposals that contained intergovernmental mandates and identifies proposals that would have imposed costs on state, local, or tribal governments that exceeded the threshold.)

GENERAL OBSERVATIONS ABOUT MANDATES AND THEIR COSTS

Based on the analyses conducted over the past year, CBO has developed a number of general observations about mandates and their costs:

- o Most mandates did not impose significant costs.
- o Sometimes there were costs, but not direct costs as defined in UMRA.
- o Not all costs CBO identified resulted from mandates.
- o Most significant intergovernmental mandates would have imposed costs on state and local governments as employers, not as governing bodies.

Most Mandates Did Not Impose Significant Costs

Most of the proposed federal mandates that CBO identified would have imposed few, if any, additional direct costs on mandated parties. For example, a number of the bills reviewed would have preempted state or local laws in areas such as pesticide regulation. Although such preemptions would certainly limit how state and local governments operate in those areas, CBO estimated that such limitations would not require those governments to increase expenditures.

In a number of cases, CBO estimated that the imposition of a mandate would lead to savings for the mandated parties. For example, H.R. 2024, the Mercury-Containing and Rechargeable Battery Management Act, would have imposed mandates on the manufacturers and importers of regulated batteries and other products. Those mandates included labeling, recordkeeping, and other requirements with which manufacturers and importers already comply because of state laws or normal business practices. Thus, manufacturers and importers would not have incurred additional costs. Moreover, by standardizing those requirements, the bill might have produced savings for affected parties who must now comply with different labeling requirements in individual states.

Sometimes There Were Costs, but Not Direct Costs

CBO has interpreted section 421(3) of the Congressional Budget Act—the definition of direct costs—as applying to the additional costs that mandated parties would incur

in complying with new enforceable duties. When determining whether the UMRA thresholds were exceeded, CBO did not include costs that other parties might face as a result of actions taken by the mandated parties. Although such costs were not counted when making threshold determinations, CBO identified all costs affecting state, local, and tribal governments whenever possible. For major private-sector mandates such as health insurance reform and the minimum wage, CBO also identified important indirect economic effects.

For example, CBO reviewed a proposal to require states and facilities that import solid waste from other states to comply with rigorous new reporting and planning requirements that would severely limit the amount of waste they could accept from other states. CBO estimated that the direct costs of complying with such rules would be incurred by waste-importing states and facilities and were unlikely to be significant. But states that wanted to export waste would probably face significant costs, primarily to find or develop alternative disposal sites. CBO concluded, however, that because the exporting states were not the mandated parties, such costs—though clearly the result of the federal mandate—were not direct costs as defined in UMRA.

Not All Costs Identified Resulted from Mandates

CBO identified more than 75 bills in 1996 containing provisions that would have resulted in additional costs to state, local, or tribal governments that were not the result of mandates as defined by the law. Most of those provisions dealt with conditions surrounding the receipt of federal aid. In such cases, states or localities are subject to the legislated requirements only if they choose to accept certain federal grants. For example, the Ryan White CARE Act Amendments (S. 641) required states, as a condition of receiving their Ryan White grant money, to ensure that all newborns be tested for human immunodeficiency virus (HIV). Such costs can be significant for state and local governments, and although CBO is not required to estimate them, it does so whenever possible.

Most Significant Intergovernmental Mandates Would Have Imposed Costs on State and Local Governments as Employers, Not as Governing Bodies

When CBO began reviewing bills for mandates, CBO anticipated that most of the intergovernmental mandates would be cases in which the Congress was requiring state and local governments to act as regulators in place of the federal government. Indeed, many of the existing mandates that state and local governments have highlighted have been such cases (for example, environmental laws). In actuality, however, most of the significant mandates identified by CBO—health insurance

reform, minimum wage, occupational safety—would have affected state and local governments as employers, not as governing bodies.

PROBLEMS IN INTERPRETING DEFINITIONS

Although the definitions of "mandates" and "direct costs" are explicitly stated in UMRA, applying those definitions can be difficult. Indeed, CBO staff spent much more time than was originally anticipated in determining whether a bill contains a mandate as defined in UMRA and, if it does, in identifying exactly what costs to attribute to complying with that mandate. Further review and analysis have resolved many of those difficulties. Some applications, however, remain unresolved.

In general, UMRA defines a mandate as any provision in legislation, statutes, or regulations that would impose an enforceable duty on state, local, or tribal governments or the private sector. Other provisions of UMRA, however, either narrow the definition of "mandate" or exclude certain provisions from its application entirely. Determining how to apply those qualifications and exceptions to legislation was often difficult.

In addition, UMRA generally defines the direct costs of a mandate as amounts that state, local, or tribal governments and the private sector are required to spend to comply with the enforceable duty minus any direct savings that would result from complying with that mandate. CBO also had problems applying that definition to several legislative proposals.

Issues CBO Was Able to Resolve

CBO was able to find workable solutions to problems posed by a number of ambiguities in the law's definitions. In particular, CBO developed internal guidelines that allowed analysts to consistently apply the legislative exclusions, determine what constitutes a voluntary federal program, and identify mandates in large entitlement grant programs.

Applying the Legislative Exclusions. Certain bills or provisions are entirely excluded from consideration under UMRA. Specifically, section 4 of UMRA excludes provisions that enforce constitutional rights of individuals; establish or enforce statutory rights that prohibit discrimination; require compliance with certain accounting and auditing procedures; provide emergency assistance at the request of state, local, or tribal governments; are necessary for the national security or the ratification or implementation of international treaty obligations; are emergencies as

designated by the President and the Congress; or relate to certain programs of the Social Security Act.

Determining when some of those exclusions apply was difficult in many cases, particularly with bills or provisions that might enforce the constitutional rights of individuals. It was often unclear whether to exclude a legislative provision that would affect the right of due process of law because that provision might enforce the constitutional rights of individuals. For example, CBO was uncertain whether the exclusion would apply to a bill that would allow either party in a suit concerning defective medical devices to request a separate hearing related to punitive damages. That bill would alter the procedural rights of litigants.

CBO decided to apply the exclusions narrowly. In the case of due process rights, for example, only bills that would expand rights of individuals vis-à-vis governments as sovereign entities would be excluded for the purposes of preparing mandate cost statements. In the medical device case, because sovereignty was not an issue, CBO decided that the bill allowing for separate hearings would not be excluded from UMRA.

Determining What Constitutes a Voluntary Federal Program. Duties arising out of participation in a voluntary federal program are not defined as mandates in UMRA. Applying that exception was relatively straightforward for intergovernmental programs, and CBO had few difficulties determining whether a program was voluntary for state, local, or tribal governments.

Determining what "voluntary federal program" meant for the private sector proved more difficult. In a host of cases, CBO concluded that some, seemingly similar, actions are mandates, but others are not. For example, CBO decided that license fees for air carriers are mandates but that fees to enter national parks are not. Based on further review and analysis, CBO has concluded that such determinations are best based on a distinction between sovereign (nonvoluntary) and business-type (voluntary) programs that was recommended by the *Report of the President's Commission on Budget Concepts* (1967) for use in recording budgetary receipts.

On that basis, a federal program is considered to be voluntary if it does not rely on the use of sovereign power to accomplish its ends—that is, if the program is essentially nongovernmental. Conversely, a federal program is considered to be nonvoluntary if it relies on the federal government to exercise its sovereign powers. Voluntary federal programs include ones that are business- or market-oriented, such as hunting and grazing licenses and fees or receipts of government enterprises. Thus, fees to enter national parks are not mandates because they are imposed as a right of ownership, not of sovereignty, but license fees for air carriers are mandates because they are imposed through the government's sovereign power to regulate commerce.

Other examples of nonvoluntary federal programs include immigration, copyright and patent fees, and judiciary fees.

Identifying Mandates That Affect Large Entitlement Grant Programs. Some Members of Congress have expressed concern about how CBO interpreted "federal intergovernmental mandate" as defined in UMRA, particularly as it applied to large entitlement programs such as Medicaid. For such programs, UMRA defines a federal intergovernmental mandate as:

...any provision in legislation, statute, or regulation that relates to a then-existing federal program under which \$500,000,000 or more is provided annually to state, local, and tribal governments under entitlement authority, if the provision—(i)(I) would increase the stringency of conditions of assistance to state, local, or tribal governments under the program; or (II) would place caps upon, or otherwise decrease, the federal government's responsibility to provide funding to state, local, or tribal governments under the program; and (ii) the state, local, or tribal governments that participate in the federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.²

When asked to review the President's proposal for a cap on federal Medicaid spending per beneficiary, CBO determined that the proposal did not contain a mandate as defined in UMRA. Although the main purpose of that proposal was to cap the federal government's financial responsibility under the program, CBO determined that the limit did not constitute a mandate because the states had the flexibility to offset the loss of federal funds by reducing their own financial or programmatic responsibilities. Those offsets could be achieved by eliminating or reducing some optional services, such as prescription drugs or dental services, or by choosing not to serve some optional beneficiaries, such as the medically needy or children and pregnant women whose family income is between 133 percent and 185 percent of poverty. Those options provide substantial flexibility to states, and even though that flexibility varies dramatically among states, all states have significant flexibility. In addition to the flexibility provided in current law, the President's proposal would have granted states additional flexibility that also could be used to offset the reductions in federal spending.

Some people have argued that the Congress intended that the flexibility required under subsection (ii) be *new* flexibility, provided by the legislation imposing the mandate, and that by considering flexibility provided under current law, CBO was

2. The Congressional Budget and Impoundment Control Act of 1974, section 421(5)(B).

not reading the provision as the Congress had intended. CBO believes that UMRA does not limit the flexibility to be considered to that provided by the proposed legislation.

Issues CBO Could Not Resolve

Several difficulties remain in applying UMRA to legislative proposals. In particular, CBO remains uncertain about whether to count the effects of new legislation on existing mandates, how to measure the costs of extending an expiring mandate, and how to aggregate costs and savings in the same legislative proposal. Resolving those problems may require legislative clarification either by amending UMRA or having a precedent established through the use of the point-of-order procedure.

Do Effects on Existing Mandates Count Under UMRA? Whether the effects a bill may have on the costs of existing mandates should be counted as the costs of mandates under UMRA is unclear. For example, S. 1271, the Nuclear Waste Policy Act of 1996, would have required the Department of Energy to establish a temporary storage facility for spent nuclear fuel on lands currently owned by the federal government in Nevada. Although S. 1271 would, by itself, establish no new enforceable duties on state, local, or tribal governments, the construction and operation of an interim storage facility, as required by the bill, could increase the cost to the state of complying with existing federal requirements, such as those for emergency response. CBO could not determine whether those costs should be considered the direct costs of a mandate for the purposes of UMRA.

What Is the Cost of Extending an Existing Mandate? The basic issue in estimating the direct cost of a provision that extends an expiring mandate is what base case the extension should be compared with in calculating that cost. Depending on how UMRA is interpreted, those costs could be measured relative to either a base case that assumes the mandate will not exist beyond its current expiration date or a base case that assumes the mandate will continue. In the first situation, the extension of the mandate would be treated as a new mandate, and all costs above those that would be incurred in any event would be attributed to the legislation. In the latter situation, extension of a mandate with no changes would result in no additional costs.

The ambiguity can be illustrated with the example of a proposal to extend certain pesticide fees. Before the 104th Congress enacted H.R. 1627—The Food Quality Protection Act—the Environmental Protection Agency had the authority, through 1998, to collect maintenance fees from pesticide producers. H.R. 1627 extended that authority through 2000 and authorized an increase in the fee. Extending the existing authority will result in \$14 million being collected annually from 1998 through 2000. Increasing the fee will result in \$2 million more being collected each year. Although only the \$2 million increase can unambiguously be

called a new direct cost, CBO said in its mandate cost statement that it was uncertain about whether to also count as a direct cost the \$14 million extension.

The language of UMRA and the legislative history do not provide sufficiently clear guidance for choosing one method of calculation over the other. The ambiguity rests on differences between sections 421 and 428 of the Congressional Budget Act, both of which define how net costs are to be calculated, as well as on the relationship between those two sections. Section 421 defines costs for new mandates, and section 428 defines how UMRA is to treat reauthorizations or amendments of existing statutes. Definitions in section 428 are not sufficiently clear in practice, however, and clarifying their ambiguities will probably require legislative changes.

How Should Costs and Savings in the Same Bill Be Aggregated? UMRA instructs CBO to estimate whether the direct costs of all federal mandates in a bill will equal or exceed the specified thresholds. The law also defines direct costs as expenditures by mandated parties that are necessary to comply with the mandate minus any direct savings to those parties from complying. The thresholds apply to a bill as a whole, not to individual mandates within a bill.

This definition clearly requires CBO to subtract the direct savings from the direct costs of any one mandate to determine the net cost of that mandate. So, for example, if a bill required an industrial plant to install pollution control equipment, CBO would count the costs of installing such equipment and subtract any reductions in costs to that plant. (Savings to other parties that resulted from less pollution would not be counted as direct savings resulting from compliance with the mandate.)

The direct costs of mandates in a bill can be offset with direct savings only if those savings are associated with the same activity that is affected by the mandate (under section 421) or if those savings occur within the same statute (under section 428). Because the terms "activity" and "statute" are not well defined in the act, in a number of cases CBO was not sure about the appropriateness of subtracting savings from costs for the purpose of determining whether the threshold had been breached. Thus, for those bills, CBO's mandate statement recorded some costs and savings separately and noted that it was unclear how to calculate the aggregate cost of the bill.

MEASURES OF SUCCESS

The Congress enacted UMRA with two stated goals: to increase and improve the information provided to the Congress about the effect of federal legislation on state, local, and tribal governments and the private sector; and to curb the practice of imposing unfunded federal mandates on states and local governments. CBO has

played a significant role in carrying out the first goal during UMRA's initial year by reviewing and analyzing more than 700 bills and legislative proposals. CBO provided statements for bills reported by authorizing committees before floor consideration in virtually all cases. A point of order was never raised because of the absence of a CBO statement. In at least some cases, the Congress used the information to minimize the costs of intergovernmental mandates.

Perhaps the best example of this phenomenon was action by the sponsors of S. 1664, the Immigration Control and Financial Responsibility Act of 1996, to alter the effective date of provisions in the bill requiring states to make certain changes when they issue driver's licences and identification documents. CBO estimated that section 118 of S. 1664, as reported by the Senate Committee on the Judiciary, would have required states, within one year, to issue new driver's licenses and identification cards at a cost of between \$80 million and \$200 million in fiscal year 1998—an amount that exceeded the \$50 million threshold for intergovernmental mandates. Those costs would have resulted primarily from an influx of individuals seeking early renewal of their driver's licenses and identification cards.

Based on that information from CBO's cost estimate, the bill's sponsors offered, and the Congress ultimately enacted, a floor amendment to allow states to implement the new requirements over an extended period of time, thereby eliminating the influx of renewals and significantly reducing costs. CBO estimated that if the amendment was adopted, the provisions affecting driver's licenses and identification cards would total between \$10 million and \$20 million and that such costs would be spread over a six-year period.

The Congress made similar changes in a number of other bills or amendments as a result of concern about possible intergovernmental mandate costs. Most notably, such changes occurred in legislation affecting securities and health insurance reform.

Aside from such anecdotal evidence, the success of the second goal—that of curbing the practice of imposing unfunded federal mandates—is hard to assess because UMRA does not require that the number of mandates actually enacted in any given year be tallied or reported; nor is there a record of bills that reduced existing mandates. A preliminary review by CBO of the laws enacted during UMRA's first year, however, indicates that the Congress passed few inter-governmental or private-sector mandates over the relevant thresholds. Of the five intergovernmental mandates that CBO identified as exceeding the \$50 million threshold, only the increase in the minimum wage was enacted into law in a form that will impose costs on state and local governments in excess of that threshold. In the four other cases—securities reform, standards of the Occupational Safety and Health Administration, immigration reform, and health insurance reform—the Congress either lowered the costs below the threshold before enacting the mandates or chose not to enact the proposal at all (see Table 2). With regard to private-sector mandates,

TABLE 2. REPORTED BILLS WITH MANDATES THAT EXCEEDED THE STATUTORY THRESHOLDS

Topic	Mandate	Was a Version Enacted into Law?	Did Enacted Version Exceed Threshold?
Intergovernmental Mandates (Threshold is \$50 million)			
Amendments to Fair Labor Standards Act	Increase federal minimum wage	Yes	Yes
Securities Regulatory Reform	Preempt state securities fees	Yes	No ^a
Immigration Reform	Require Social Security numbers on driver's licenses	Yes	No ^b
Health Insurance Reform	Mental health parity in insurance plans	Yes	No ^c
Occupational Safety And Health	Apply OSHA requirements to state/local workplaces	No	n.a.
Private-Sector Mandates (Threshold is \$100 million)			
Amendments to Fair Labor Standards Act	Increase federal minimum wage	Yes	Yes
Health Insurance Reform	Health insurance portability	Yes	Yes
Health Insurance Reform	Mental health parity	Yes	Yes
Health Insurance Reform	Minimum-length maternity stay	Yes	Yes
Immigration Reform	Requirements on sponsors of immigrants	Yes	Yes
Welfare Reform	Earned income credit provisions and requirements on sponsors of immigrants	Yes	Yes
Small Business Jobs Protection	Miscellaneous tax provisions	Yes	Yes
Telecommunications Reform	Interconnection, universal service, and blocking certain programs	Yes	Yes
Farm Bill	Fees and dairy requirements	Yes	No

TABLE 2. CONTINUED

Topic	Mandate	Was a Version Enacted into Law?	Did Enacted Version Exceed Threshold?
Private-Sector Mandates (Threshold is \$100 million) Continued			
Sports Franchises	Requirements on owners and leagues	No	n.a.
Nuclear Waste Policy	Fees and training requirements	No	n.a.

SOURCE: Congressional Budget Office.

NOTES: Mandates in this table are those identified by the Congressional Budget Office when a bill was reported by an authorizing or conference committee. In most cases, more than one formal CBO statement was issued for each mandate topic. Thus, for example, the five intergovernmental topics shown in Table 2 correspond to the 11 mandate statements with costs exceeding the threshold shown in Table 1. The 11 private-sector mandates in Table 2 correspond to the 38 mandate statements shown in Table 1.

OSHA = Occupational Safety and Health Administration; n.a. = not applicable.

- a. The original version preempted state requirements for registering securities, including the collection of certain fees. The enacted version limits the scope of this preemption and allows states to continue to collect certain fees for three years or until they change or amend their own securities laws.
- b. The original version required driver's licenses to include Social Security numbers by October 1, 1997, and would have resulted in a large influx of individuals seeking early renewals. The enacted version allows states to implement the new requirements over an extended period of time, thereby eliminating the influx of renewals and significantly reducing the costs.
- c. The original version required parity for all aspects of health care coverage, including limits on lifetime and annual expenditures, copayments, deductibles, and restrictions on the number of visits. The enacted version delayed implementation until January 1, 1998, and required parity only for lifetime and annual expenditures.

the Congress voted to amend the dairy provisions of the farm bill, thus reducing the costs of the mandate below the threshold. Two bills with significant private-sector mandates—involving sports franchises and nuclear waste policy—were not enacted into law.

Whether UMRA can be credited with these outcomes is an open question. The above evidence, however, provides at least some support for concluding that after one year, the procedures established by UMRA have worked largely as intended.

APPENDIX A. CONTRIBUTORS TO ANALYSES OF MANDATES

Primary Analysts

Intergovernmental Mandates

Budget Analyses Division

Theresa Gullo	Chief, State and Local Government Cost Estimates
Brenda Trezvant	Secretarial Support
Leo Lex	Justice, Immigration, State Tax Issues, Transportation
Karen McVey	Transportation, Immigration, Justice, Tax Issues
Marjorie Miller	Natural Resources, Agriculture
Marc Nicole	Education, Banking, Social Services
John Patterson	Health, Social Services
Pepper Santalucia	Environment

Private-Sector Mandates

Natural Resources and Commerce Division

Elliot Schwartz	Coordinator, Natural Resources and Commerce
Rae Wiseman	Secretarial Support
Ngina Chiteji	Thrift Institutions
Amy Downs	Natural Resources and International Affairs
Patrice Gordon	Natural Resources, Environment, and Banking
Jean Wooster	Agriculture, Commerce, and Transportation

Health and Human Resources Division

Bruce Vavrichek	Coordinator, Health and Human Resources
James Baumgardner	Health
Linda Bilheimer	Health
Julia Matson	Health
Dan Mont	Immigration, Income Security, Social Services
Ralph Smith	Labor, Income Security

Special Studies Division

Matt Eyles	Coordinator, Special Studies
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National Security Division

Neil Singer Coordinator, National Security

Tax Analysis Division

Richard Kasten Coordinator, Tax Analysis
Stephanie Weiner Revenues

Office of the General Counsel

Jennifer Smith Legal Counsel

Other Contributors*Natural Resources and Commerce Division*

Angela McCollough	Secretarial Support
Coleman Bazelon	Central Valley Water
Perry Beider	Superfund
Anna Cook	Pharmaceuticals
Terry Dinan	Safe Drinking Water
Richard Farmer	Energy
Victoria Greenfield	International Affairs
Roger Hitchner	Agriculture
Daniel Lieberman	Transportation Safety and General Support
David Moore	Telecommunications and Space
Carl Muehlmann	National Parks and General Support
Philip Webre	Television

Health and Human Resources Division

Sharon Corbin-Jallow	Secretarial Support
Ron Moore	Secretarial Support
B.K. Atrostic	Private Pensions, Health
Sandy Christensen	Health
Portia Defilippes	Labor
Carol Frost	Health
Susan Labovich	Labor
Jay Noell	Education
Carla Pedone	Housing
Connie Rhind	Social Services, Labor

National Security Division

Ellen Breslin-Davidson
Eric Labs

Military and Veterans Health Care
International Programs

APPENDIX B. BILLS CONTAINING INTERGOVERNMENTAL MANDATES,
JANUARY-DECEMBER 1996

The Congressional Budget Office reviewed more than 700 bills and other legislative proposals to determine whether they contained federal mandates. Of those bills and proposals, 69 contained mandates that would affect state, local, or tribal governments; 11 of them contained mandates with costs above the \$50 million threshold (see Table B-1 on next page).

TABLE B-1. BILLS CONTAINING INTERGOVERNMENTAL MANDATES, JANUARY-DECEMBER 1996

Bill Number	Title	Mandate
Bills Containing Mandates with Costs Exceeding the \$50 Million Threshold		
H.R. 940	Working Wage Increase Act of 1995	Increase minimum wage
H.R. 940 (Amendment)	Increase the Federal Minimum Wage	Increase minimum wage
H.R. 1227 (Amendment)	Portal-to-Portal Act of 1947	Increase minimum wage
H.R. 3005	Securities Amendments of 1996	Preempts state securities fees
H.R. 3103 (Senate passed)	Health Insurance Reform Act	Mental health parity
H.R. 3136 (Proposal)	Amend Fair Labor Standards Act	Increase minimum wage
H.R. 3265	Increase in the Federal Minimum Wage	Increase minimum wage
H.R. 3265 (Amendment)	Increase in the Federal Minimum Wage	Increase minimum wage
S. 269	Immigration Control and Financial Responsibility Act	Driver's license provision
S. 413	Amend Fair Labor Standards Act	Increase minimum wage
S. 1423	Occupational Safety and Health Reform and Reinvention Act	Apply OSHA requirements to state and local workplace
Bills Containing Mandates with Costs Below the \$50 Million Threshold		
H.R. 1036 (Proposal)	Metropolitan Washington Airports Act	Requires additional board directors; sets bond limit
H.R. 1036	Metropolitan Washington Airports Act	Requires additional board directors
H.R. 1186	Professional Boxing Safety Act of 1996	Requirements on State Boxing Commissions, Tribes
H.R. 1296	To provide for the administration of certain Presidio properties	Requires tribe to enter MOA; state to produce plan

TABLE B-1. CONTINUED

Bill Number	Title	Mandate
Bills Containing Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 1533	Sexual Offender Tracking and Identification Act of 1996	Additional reporting requirements for two states
H.R. 1627 (Agriculture Committee)	Food Quality Protection Act of 1996	Preempts local/tribal authority to regulate pesticides
H.R. 1627 (Commerce Committee)	Food Quality Protection Act of 1996	Preempts state authority to set pesticide standards
H.R. 1855	Amend Title 11, DC Code	Preempts Superior Court order
H.R. 2024	Mercury Containing and Rechargeable Battery Act	Preempts state hazardous waste laws
H.R. 2202	Immigration in the National Interest Act of 1995	Denies state benefits to certain aliens
H.R. 2202 (Agriculture Committee)	Immigration in the National Interest Act of 1995	State employment agencies must review documents
H.R. 2337	Taxpayer Bill of Rights 2	Requires information returns to include phone numbers
H.R. 2406	United States Housing Act of 1996	Law enforcement must provide information
H.R. 2428	Bill Emerson Good Samaritan Food Donation Act	Preempts state liability laws
H.R. 2505	Alaska Native Claims Settlement Act Amendments	Requirements imposed on Native American corporations
H.R. 2539	ICC Termination Act	Preempts interstate bus tax
H.R. 2594	Railroad Unemployment Insurance Amendments	Raises payroll tax on commuter rail authorities
H.R. 2854	Modify the Operation of Certain Agricultural Programs	Preempts state dairy price controls
H.R. 2854 (Conference draft)	Federal Agricultural Improvement and Reform Act	Preempts state dairy price controls

TABLE B-1. CONTINUED

Bill Number	Title	Mandate
Bills Containing Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 2925	Antitrust Health Care Advancement Act	Increases cost of state antitrust prosecutions
H.R. 2976	Patient Right to Know Act of 1996	Cannot restrict discussion of treatment by doctors
H.R. 3005 (Revised version)	Securities Amendments of 1996 (Revised)	Preempts state securities fees
H.R. 3024	United States-Puerto Rico Political Status Act	Requires Puerto Rico to conduct referendum
H.R. 3024 (Senate reported)	United States-Puerto Rico Political Status Act	Requires Puerto Rico to conduct referendum
H.R. 3058	Overseas Citizens Voting Rights Act	Requires use of federal absentee ballots
H.R. 3070	Health Coverage Availability and Affordability Act	Reporting and administrative requirements
H.R. 3103	Health Coverage Availability and Affordability Act	Reporting and administrative requirements
H.R. 3103 (Conference draft)	Health Insurance Portability and Accountability Act	Additional state reporting requirements
H.R. 3431	Armored Car Industry Reciprocity Improvement Act	Reciprocity for out-of-state licenses
H.R. 3448	Small Business Job Protection Act of 1996	Reinstates the airport and airway excise tax
H.R. 3604	Safe Drinking Water Act Amendments of 1996	Customer notification; operator certification; capacity level
H.R. 3604 (Conference draft)	Safe Drinking Water Act Amendments	Requires customer notification
H.R. 3734	Welfare and Medicaid Reform Act of 1996	Various new mandates; other mandates repealed

TABLE B-1. CONTINUED

Bill Number	Title	Mandate
Bills Containing Mandates with Costs Below the \$50 Million Threshold (Continued)		
H.R. 3923	Aviation Disaster Family Assistance Act	Prohibits impeding NTSB's assistance activities
H.R. 3968	Federal Courts Improvement Act	Preempts state laws on gun possession; new fees
S. 605	Omnibus Property Rights Act of 1995	Restricts state taking of private property
S. 641 (House conference)	Ryan White CARE Act Amendments of 1996	Annual AIDS study and CDC guidelines
S. 641 (Senate conference)	Ryan White CARE Act Amendments of 1996	Annual AIDS study and CDC guidelines
S. 704	National Gambling Impact Study Commission Act	Power to subpoena state records
S. 735 (Conference draft)	Terrorism Prevention Act	Limits on documents for alien verification
S. 969	Newborns' and Mothers' Health Protection Act	Requires insurance to cover longer hospital stays
S. 1028	Health Insurance Reform Act of 1995	Health requirements on states as employers
S. 1028 (Amendment)	Health Insurance Reform Act	Reporting and administrative requirements
S. 1324	Organ and Bone Marrow Transplant Reauthorization	Data management fee
S. 1477	Food and Drug Administration Performance Act	Preempts state nonprescription drug laws
S. 1505	Accountable Pipeline Safety and Partnership Act	Reporting for municipal gas operators
S. 1662	Oregon Resource Conservation Act of 1996	Requires Oregon tribe to consult with state
S. 1730	Oil Spill Prevention and Response Improvement Act	Requirements on ports and vessels

TABLE B-1. CONTINUED

Bill Number	Title	Mandate
Bills Containing Mandates with Costs Below the \$50 Million Threshold (Continued)		
S. 1887	Federal Courts Improvements Act	Preempts state laws on gun possession; fee increase
S. 1956 (Finance Committee)	Reconciliation Recommendations (Welfare reform)	Various new mandates; other mandates repealed
S. 1956 (Agriculture Committee)	Reconciliation Recommendations (Welfare reform)	Various new mandates; other mandates repealed
S. 1983	To Amend the Native American Graves Protection and Repatriation Act.	Additional requirements on those excavating tribal graves
Bills Containing Mandates with Costs That Could Not Be Estimated		
H.R. 995	ERISA Targeted Health Insurance Reform Act	Preempts state premium taxes
H.R. 3160	Health Coverage Availability and Affordability Act	Health mandates; preempts state premium taxes
H.R. 3539	Federal Aviation Authorization of 1996	Various aviation-related mandates; tax preemption
H.R. 3734 (House conference)	Personal Responsibility and Work Opportunity Reconciliation Act	Requirements on state welfare programs; other requirements repealed
H.R. 3734 (Senate conference)	Personal Responsibility and Work Opportunity Reconciliation Act	Requirements on state welfare programs; other requirements repealed
S. 1994	Federal Aviation Reauthorization Act	Possibly preempts state tax authority; must provide pilot employment records

SOURCE: Congressional Budget Office, Budget Estimate Tracking System.

NOTE: OSHA = Occupational Safety and Health Administration; MOA = Memorandum of Agreement; DC = District Court; ICC = Interstate Commerce Commission; NTSB = National Transportation Safety Board; AIDS = acquired immunodeficiency syndrome; CDC = Centers for Disease Control and Prevention; ERISA = Employee Retirement and Income Security Act of 1979.

a. Cannot be estimated.